IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.82 OF 2005

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M/s.TMT India Limited & ors. ...Petitioners

v/s.

Blue Bends Finance Ltd. ...Respondent

...

Mr.Ashish Kamat i/b M/s.V. Deshpande & Co. for the Petitioners.

Mr.Sanjay Jain i/b T.N.Tripathi for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 21ST MARCH,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the sole arbitrator dated 23-7-2004. The first challenge to the award is that the dispute referred to the arbitrator was barred by the law of limitation. According to the Petitioner, second installment was due on 5-1-1996. It was not paid, therefore the claim was barred by law of limitation, because the acknowledgement dated 6-7-1997 does not extend the period of limitation. This contention has been considered by the learned Arbitrator and has held that payment of second, third and fourth installments has been made in part by the Petitioner, thus, there was part payment made till October, 1996, therefore, acknowledgement dated 6-7-1997 will extend the period of limitation. The learned Counsel for the Petitioner submits that this finding that the installment up to October, 1996 was made in part is not correct. The learned Counsel for the Petitioner himself concedes that this a finding of fact and the reason why the Petitioner says that this finding of fact is wrong, in any case , is not shown to me.

2. The second contention urged is that though the agreement describes itself that the agreement is for hire purchase, in essense it is the loan transaction. If this was the case of the Petitioner, it was open for the Petitioner to enter into the witness box and lead oral evidence to show what accoring to him is the real nature of the transaction. However, perusal of the award shows that though the Respondent led oral evidence, the Petitioner though was given an opportunity, did not lead any oral evidence. In the absence of any oral evidence, the Petitioner can not prove what was the real nature of the transaction which was disclosed in the agreement. The finding that the hire purchase transaction is essentially a finding of fact recorded by the learned arbitrator on appreciation of material available on record. Petition, therefore, cannot be entertained. It is disposed of.

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